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12 Burlington Factory Warehouse Corp., and
13 Lord & Taylor, LLC

14
15 **UNITED STATES DISTRICT COURT**
16
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 UNICOLORS, INC., a California
20 corporation,

21 Plaintiff,

22 vs.

23 PAUL LASRY, an individual;
24 BURLINGTON COAT FACTORY
25 WAREHOUSE CORP., a New Jersey
26 corporation; DEX CLOTHING, LTD., a
27 Canada corporation; LORD & TAYLOR,
28 LLC, a New York corporation, and DOES 1
through 10,

Defendants.

Case No. 15-cv-03053 MWF (PJWx)

PROTECTIVE ORDER

Complaint Filed: April 23, 2015
Trial Date: None Set

CALL &
JENSEN
EST. 1981

1 On stipulation of the Parties, the Court enters a Protective Order in this matter as
2 follows:

3
4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from
7 public disclosure and from use for any purpose other than prosecuting this matter would
8 be warranted. Accordingly, the parties have stipulated to and petitioned this Court to
9 enter the following Stipulated Protective Order. The parties acknowledge that this
10 Order does not confer blanket protections on all disclosures or responses to discovery
11 and that the protection it affords extends only to the limited information or items that
12 are entitled under the applicable legal principles to treatment as confidential. The
13 parties have agreed that the terms of this Protective Order shall also apply to any future
14 voluntary disclosures of confidential, proprietary, or private information. The parties
15 reserve their rights to object to or withhold any information, including confidential,
16 proprietary, or private information, on any other applicable grounds permitted by law,
17 including third-party rights and relevancy.

18
19 2. DEFINITIONS

20 2.1 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, retained experts, and outside counsel (and their support staff).

22 2.2 Disclosure or Discovery Material: all items or information,
23 regardless of the medium or manner generated, stored, or maintained (including, among
24 other things, testimony, transcripts, or tangible things), that are produced or generated in
25 disclosures or responses to discovery in this matter.

26 2.3 “Confidential” Information or Items: All information in whatever
27 form, such as oral, written, documentary, tangible, intangible, electronic, or digitized
28 now or hereafter in existence that:

1 a) derives independent economic value, actual or potential, from not
 2 being generally known to, and not being readily ascertainable by proper means, by other
 3 persons who can obtain economic value from its disclosure or use;

4 b) is the subject of efforts that are reasonable under the
 5 circumstances to maintain its secrecy; and

6 c) is otherwise regarded by a party as being confidential, private, or
 7 proprietary in nature.

8 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
 9 material that the disclosing party has a reasonable belief that the information disclosed,
 10 if known to one or more parties in the case would have a reasonable chance of putting
 11 the disclosing party to a competitive disadvantage or otherwise result in the disclosure
 12 of sensitive proprietary information that could cause future harm. Notwithstanding the
 13 terms of this agreement, Plaintiff’s attorney is entitled to disclose to Plaintiff the total
 14 revenue and gross profit data disclosed in this action, as well as the names of any parties
 15 responsible for distributing the infringing product at issue, or any components of said
 16 product.

17 2.5 Receiving Party: a Party that receives Disclosure or Discovery
 18 Material from a Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or
 20 Discovery Material in this action.

21 2.7 Designating Party: a Party or non-party that designates information
 22 or items that it produces in disclosures or in responses to discovery as
 23 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

24 2.8 Protected Material: any Disclosure or Discovery Material that is
 25 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

26 2.9 Expert: a person with specialized knowledge or experience in a
 27 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
 28 as an expert witness or as a consultant in this action. This definition includes a

1 professional jury or trial consultant retained in connection with this litigation. The
2 expert witness or consultant may not be a past or a current employee of the Party
3 (including any affiliates or related entities) adverse to the Party engaging the expert
4 witness or consultant, or someone who at the time of retention is anticipated to become
5 an employee of the Party (including any affiliates or related entities) adverse to the
6 Party engaging the expert witness or consultant.

7 2.10 Professional Vendors: persons or entities that provide litigation
8 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
9 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.) and
10 their employees and subcontractors.

11 12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected
14 Material (as defined above), but also any information copied or extracted therefrom, as
15 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
16 conversations, or presentations by parties or counsel to or in litigation or in other
17 settings that might reveal Protected Material.

18 19 4. DURATION

20 Even after the termination of this action, the confidentiality obligations imposed
21 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
22 or a court order otherwise directs.

23 24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for
26 Protection. Each Party or non-party that designates information or items for protection
27 under this Order must take care to limit any such designation to specific material that
28 qualifies under the appropriate standards. A Designating Party must take care to

1 designate for protection only those parts of material, documents, items, or oral or
 2 written communications that qualify – so that other portions of the material, documents,
 3 items, or communications for which protection is not warranted are not swept
 4 unjustifiably within the ambit of this Order.

5
 6 5.2 Manner and Timing of Designations. Except as otherwise provided
 7 in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
 8 stipulated or ordered, material that qualifies for protection under this Order must be
 9 clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (apart from transcripts
 12 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
 13 legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at the top or bottom of
 14 each page that contains protected material.

15 A Party or non-party that makes originals or copies of documents or
 16 materials available for inspection need not designate them for protection until after the
 17 inspecting Party has indicated which material it intends to copy. During the inspection
 18 and before the designation, all of the material made available for inspection shall be
 19 deemed “ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
 20 documents it wants copied and produced, the Producing Party must designate, either in
 21 writing or on the record (at a deposition), which documents, or portions thereof, qualify
 22 for protection under this Order. Then the Receiving Party must affix the
 23 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” legend at the top of each
 24 copied page that contains Protected Material. If only a portion or portions of the
 25 material on a page qualifies for protection, the Producing Party also must clearly
 26 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins)
 27 and must specify, for each portion, the level of protection being asserted (either
 28 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating

1 Party's right to secure protection under this Order for such material. If material is
2 appropriately designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"
3 after the material was initially produced, the Receiving Party, on timely notification of
4 the designation, must make reasonable efforts to assure that the material is treated in
5 accordance with the provisions of this Order.

6
7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
9 Party's confidentiality designation is necessary to avoid foreseeable substantial
10 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
11 the litigation, a Party does not waive its right to challenge a confidentiality designation
12 by electing not to mount a challenge promptly after the original designation is disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
14 Designating Party's confidentiality designation must do so in good faith and must begin
15 the process by conferring with counsel for the Designating Party in writing. In
16 conferring, the challenging Party must explain the basis for its belief that the
17 confidentiality designation was not proper and must give the Designating Party an
18 opportunity to review the designated material, to reconsider the circumstances, and, if
19 no change in designation is offered, to explain the basis for the chosen designation. A
20 challenging Party may proceed to the next stage of the challenge process only if it has
21 engaged in this meet-and-confer process first.

22 6.3 Court Intervention. A Party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the Designating
24 Party may file and serve a motion that identifies the challenged material and sets forth
25 in detail the basis for the challenge. Each such motion must be accompanied by a
26 competent declaration that affirms that the movant has complied with the meet-and-
27 confer requirements imposed in the preceding paragraph and that sets forth with
28 specificity the justification for the confidentiality designation that was given by the

1 Designating Party in the meet-and-confer dialogue. The parties agree that a
 2 confidentiality designation shall not create a presumption in favor of such
 3 confidentiality designation, and that the Court shall decide the issue as such.

4 Until the Court rules on the challenge, all parties shall continue to afford
 5 the material in question the level of protection to which it is entitled under the
 6 Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that
 10 is disclosed or produced by another Party or by a non-party in connection with this case
 11 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 12 Material may be disclosed only to the categories of persons and under the conditions
 13 described in this Order. When the litigation has been terminated, a Receiving Party
 14 must comply with the provisions of section 11, below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
 16 location and in a secure manner that ensures that access is limited to the persons
 17 authorized under this Order.

18 The parties agree that in order to make decisions regarding settlement,
 19 Plaintiff may require access to the following information: (1) the identities of any
 20 persons not named in the complaint who are known to Defendants to have sold the
 21 items at issue in the case, (2) Defendants' gross revenues, (3) Defendants' profits, (4)
 22 fabric yields, and (5) information regarding production fabrication. The parties agree
 23 that, notwithstanding the inclusion of such information in a document marked
 24 "ATTORNEY'S EYES ONLY," Plaintiff's counsel may orally communicate to
 25 Plaintiff's president (1) the identity of any person who sold the items at issue in this
 26 case, (2) the amount of Defendants' total gross revenues for sale of the items at issue in
 27 this case, (3) the amount of Defendants' gross profits for sale of the items at issue in this
 28 case, (4) the amount of Defendants' net profits for sale of the items at issue in this case,

(5) fabric yields, and (6) the identity of any person who produced the fabric at issue in this case, provided that Plaintiff's counsel advises Plaintiff's president that the information is confidential and subject to this protective order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's outside counsel, as well as employees of said outside counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Board members, officers and directors of the Receiving Party;

(c) Other employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who are bound by internal confidentiality obligations as part of their employment or who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(e) the Court personnel assigned to this litigation;

(f) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(h) the author of the document or the original source of the information.

7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s outside counsel, as well as employees of said outside counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court personnel assigned to this litigation;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Discovery Material, the Receiving Party must so notify the Designating Party, in writing immediately and in no event more than five business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject

1 of this Protective Order. In addition, the Receiving Party must deliver a copy of this
2 Stipulated Protective Order promptly to the Party in the other action that caused the
3 subpoena or order to issue.

4 The purpose of imposing these duties is to alert the interested parties to the
5 existence of this Protective Order and to afford the Designating Party in this case an
6 opportunity to try to protect its confidentiality interests in the court from which the
7 subpoena or order issued.

8
9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
13 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
14 all copies of the Protected Material, (c) inform the person or persons to whom
15 unauthorized disclosures were made of all the terms of this Order, and (d) request such
16 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that
17 is attached hereto as Exhibit A.

18
19 10. FILING PROTECTED MATERIAL

20 Without written permission from the Designating Party, or a court order secured
21 after appropriate notice to all interested persons and after following the procedures
22 provided for in Local Rule 79-5.1, a Party may not file in the public record in this action
23 any Protected Material.

24
25 11. FINAL DISPOSITION

26 Unless otherwise ordered or agreed to in writing by the Producing Party, within
27 60 days after the final termination of this action, each Receiving Party must return all
28 Protected Material to the Producing Party or destroy the Protected Material. As used in

1 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
2 summaries or any other form of reproducing or capturing any of the Protected Material.
3 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
5 work product, even if such materials contain Protected Material. Any such archival
6 copies that contain or constitute Protected Material remain subject to this Protective
7 Order as set forth in Section 4 (DURATION), above.

8
9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of
11 any person to seek its modification in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Inadvertent Production of Privileged Documents. If a Party, through
18 inadvertence, produces any document or information that it believes is immune from
19 discovery pursuant to an attorney-client privilege, the work product privilege, or any
20 other privilege, such production shall not be deemed a waiver of any privilege, and the
21 Producing Party may give written notice to the Receiving Party that the document or
22 information produced is deemed privileged and that return of the document or
23 information is requested. Upon receipt of such notice, the Receiving Party shall
24 immediately gather the original and all copies of the document or information of which
25 the Receiving Party is aware, in addition to any abstracts, summaries, or descriptions
26 thereof, and shall immediately return the original and all such copies to the Producing
27 Party. Nothing stated herein shall preclude a Party from challenging an assertion by the
28 other Party of privilege or confidentiality.

1 12.4 Exception for Public Information. Nothing in this Stipulation shall
2 be deemed in any way to restrict the use of documents or information which are
3 lawfully obtained or publicly available to a party independently of discovery in this
4 action, whether or not the same material has been obtained during the course of
5 discovery in the action and whether or not such documents or information have been
6 designated hereunder. However, in the event of a dispute regarding such independent
7 acquisition, a party wishing to use any independently acquired documents or
8 information shall bear the burden of proving independent acquisition.

9
10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11
12 Dated: July 22, 2015

By: 

Honorable Patrick J. Walsh
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name],
 of _____ [print full address],
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for the
 Central District of California in the case of *Unicolors, Inc. v. Paul Lasry*, Case No. 15-
 CV-03053 MWF (PJW). I agree to comply with and to be bound by all of the terms of
 this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print full name]
 of _____ [print full address and
 telephone number] as my California agent for service of process in connection with this
 action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____